

# **EXHIBIT E**

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Epic Games, Inc.*

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

EPIC GAMES, INC., ) Case No. 4:20-cv-05640-YGR-TSH  
                          )  
Plaintiff, Counter-defendant, ) **EPIC GAMES INC.'S**  
                          ) **TENTATIVE INITIAL WITNESS LIST**  
                          v. )  
                          )  
                          ) The Honorable Yvonne Gonzalez Rogers  
APPLE INC., )  
                          ) Trial: May 3, 2021  
                          Defendant, Counterclaimant. )

Pursuant to Pretrial Order No. 1 (ECF No. 371) and the Court's Standing Order re: Pretrial Instructions in Civil Cases, Plaintiff and Counter-Defendant Epic Games, Inc. ("Epic") serves its tentative, initial list of trial witnesses, other than for impeachment or rebuttal, reserving its rights to supplement or amend its list for good cause or in response to Apple Inc.'s ("Apple") witness list and other pre-trial disclosures. Epic also reserves the right to substitute deposition designations for live testimony, and vice versa, including based on the availability or non-availability of any witness to appear at trial. Pursuant to Pretrial Order No. 1, Apple shall serve on or before March 16, 2021, together with its tentative witness list, an annotated version of Epic's initial tentative list showing Apple's estimated time of cross-examination and whether any listed witnesses under its control will be testifying in person or will be requesting leave to testify remotely.

DATE: March 12, 2021

**CRAVATH, SWAINE & MOORE LLP**

/s/ Katherine B. Forrest  
Katherine B. Forrest

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Epic Games, Inc.*

EPIC GAMES, INC.'S TENTATIVE INITIAL WITNESS LIST  
Case No. 4:20-cv-05640-YGR-TSH

Fact Witnesses

<u>Witness</u>	<u>Epic's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
<u>Epic Witnesses</u>					
Andrew Grant, Engineering Fellow*	Epic's membership in the Apple Developer Program; engineering and development of Epic's products for various platforms; Epic Direct Payment on iOS	1 hour			Live, in person
Thomas Ko, Senior Director, Head of Online Business Strategy and Operations	Epic's payment processing services; Apple's payment processing services; Epic Direct Payment on iOS	30 minutes			Live, in person
(* Primary witness and not included as precautionary)					

EPIC GAMES, INC.'S TENTATIVE INITIAL WITNESS LIST

Case No. 4:20-cv-05640-YGR-TSH

<u>Witness</u>	<u>Epic's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Tim Sweeney, Founder and Chief Executive Officer*	Epic's history and business; Epic's business discussions with Apple and Google; Epic Direct Payment on iOS; App Store policies and practices; Epic's marketing and promotional activities; Epic's efforts to compete in app distribution and in-app payment processing	4 hours			Live, in person
Matthew Weissinger, Vice President, Marketing*	Epic's marketing and promotional activities; marketing and promotional support services offered by video game consoles and mobile operating system providers, including Apple	1 hour			Live, in person
Document custodian	Admission of business records and other documents in Epic's possession, as necessary	20 minutes			Live, in person or may request leave to appear remotely.

## EPIC GAMES, INC.'S TENTATIVE INITIAL WITNESS LIST

Case No. 4:20-cv-05640-YGR-TSH

<u>Witness</u>	<u>Epic's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
<u>Apple Witnesses</u>					
Matt Fischer, Vice President, App Store	App Store business strategy; App Store financial performance; App Store policies and practices; Apple's market power over iOS developers; and/or the subjects of designated testimony	2 hours			Live or by Deposition Designation
Trystan Kosmynka, Senior Director, App Review	App Store review policies and practices; iOS and macOS engineering, security and privacy issues; and/or the subjects of designated testimony	1 hour			Live or by Deposition Designation
Document custodian	Admission of business records and other documents in Apple's possession, as necessary	20 minutes			Live

EPIC GAMES, INC.'S TENTATIVE INITIAL WITNESS LIST

Case No. 4:20-cv-05640-YGR-TSH

<u>Witness</u>	<u>Epic's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Eddy Cue, Senior Vice President, Internet Software and Services	The subjects of designated testimony, which include: lack of competition among mobile devices and mobile operating system software; App Store business strategy; App Store financial performance; current and historical App Store policies and practices; Apple's prior antitrust violations	Deposition Designation			Deposition Designation
Craig Federighi, Senior Vice President, Software Engineering	The subjects of designated testimony, which include: iOS and macOS engineering, security, privacy and competition issues; App Store policies and practices	Deposition Designation			Deposition Designation
Scott Forstall, Senior Vice President, iOS Software (former)	The subjects of designated testimony, which include: iOS and macOS engineering, security, privacy and competition issues; historical App Store policies and practices; Apple's in-app purchasing function	Deposition Designation			Deposition Designation

EPIC GAMES, INC.'S TENTATIVE INITIAL WITNESS LIST

Case No. 4:20-cv-05640-YGR-TSH

<u>Witness</u>	<u>Epic's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Eric Friedman, Head of Fraud Engineering, Algorithms, and Risk	The subjects of designated testimony, which include: App Store review process; fraud and other abuse in Apple's ecosystem	Deposition Designation			Deposition Designation
Eric Gray, Director, Commerce & Payments	The subjects of designated testimony, which include: inefficiencies and lack of integration of Apple's payment processing services; app pricing and inelasticity of demand; fraud and other abuse in Apple's ecosystem	Deposition Designation			Deposition Designation
C.K. Haun, Senior Director, Developer Technical Services	The subjects of designated testimony, which include: App Store review policies and practices; iOS and macOS engineering, security and privacy issues	Deposition Designation			Deposition Designation

## EPIC GAMES, INC.'S TENTATIVE INITIAL WITNESS LIST

Case No. 4:20-cv-05640-YGR-TSH

<u>Witness</u>	<u>Epic's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Ron Okamoto, Vice President, Worldwide Developer Relations (former)	The subjects of designated testimony, which include: benefits Apple receives from other software developers, including Epic; Apple's market power over iOS developers	Deposition Designation			Deposition Designation
Shaan Pruden, Senior Director of Partnership Management and Worldwide Developer Relations	The subjects of designated testimony, which include: benefits that Apple receives from other software developers, including Epic	Deposition Designation			Deposition Designation
Mark Rollins, Finance Manager	The subjects of designated testimony, which include: Apple financials; App Store profit and loss statements	Deposition Designation			Deposition Designation
Phillip Shoemaker, Technology Director, App Review (former)	The subjects of designated testimony, which include: historical App Store review policies and practices	Deposition Designation			Deposition Designation

## EPIC GAMES, INC.'S TENTATIVE INITIAL WITNESS LIST

Case No. 4:20-cv-05640-YGR-TSH

<u>Witness</u>	<u>Epic's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
<u>Third-Party Witnesses</u>					
Vivek Sharma, Vice President, Gaming, Facebook, Inc.*	App distribution; Apple restrictions on iOS app distribution; App Store review process; interactions with Apple	45 minutes			Mr. Sharma is expected to request to appear remotely.
Lori Wright, Vice President, Xbox Business Development, Microsoft Corporation*	Distribution of software; Xbox video game console business and operations; Xbox cloud gaming, including xCloud and Game Pass; interactions with Apple	90 minutes			Intends to appear live and in person, but may request leave to appear remotely.
Benjamin Simon, Founder and Chief Executive Officer, Yoga Buddhi Co.*	App distribution; participation in the Apple Developer Program; App Store review process; interactions with Apple	45 minutes			Intends to appear live and in person, but may request leave to appear remotely.
Shelley Gould, President, Co-Founder, Neuro-Fin Inc. d/b/a SmartStops*	App distribution; participation in the Apple Developer Program; App Store review process; interactions with Apple	30 minutes			Intends to appear live and in person, but may request leave to appear remotely.

EPIC GAMES, INC.'S TENTATIVE INITIAL WITNESS LIST

Case No. 4:20-cv-05640-YGR-TSH

<u>Witness</u>	<u>Epic's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Adrian Ong, Senior Vice President of Operations, Match Group*	The subjects of designated testimony, which include: App distribution; participation in the Apple Developer Program; App Store review process; interactions with Apple; differences between native apps and web experiences; Match Group's payment processing capabilities; effects of Apple's 30% fee on Match Group and its users; user acquisition	Deposition Designation			Deposition Designation

EPIC GAMES, INC.'S TENTATIVE INITIAL WITNESS LIST

Case No. 4:20-cv-05640-YGR-TSH

Expert Witnesses

<u>Witness</u>	<u>Summary of Theory and Conclusions and Bases Therefor and CV</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Susan Athey, Economics of Technology Professor, Stanford University Graduate School of Business*	See expert disclosure served February 16, 2021	1 hour /  40 minutes (with potential written direct)			Live, in person
Ned S. Barnes, Managing Director, Berkeley Research Group*	See expert disclosure served February 16, 2021	30 minutes /  15 minutes (with potential written direct)			Live, in person
David Evans, Chairman, Global Economics Group*	See expert disclosure served February 16, 2021	5 hours /  3 hours (with potential written direct)			Live, in person
Wenke Lee, Chair, College of Computing, Georgia Institute of Technology*	See expert disclosure served February 16, 2021	1 hour /  30 minutes (with potential written direct)			Live, in person

EPIC GAMES, INC.'S TENTATIVE INITIAL WITNESS LIST

Case No. 4:20-cv-05640-YGR-TSH

<u>Witness</u>	<u>Summary of Theory and Conclusions and Bases Therefor and CV</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
James Mickens, Professor of Computer Science, Harvard University*	See expert disclosure served February 16, 2021	1 hour 30 minutes /  1 hour 30 minutes (with potential written direct)			Intends to appear live and in person, but may request leave to appear remotely.
Peter E. Rossi, Professor of Marketing, Economics and Statistics, UCLA*	See expert disclosure served February 16, 2021	40 minutes /  15 minutes (with potential written direct)			Live, in person

**CERTIFICATE OF SERVICE**

I, John I. Karin, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned a resident of the County of New York, over the age of 18 years, and not a party to or interested in the within action; that declarant's business address is 825 Eighth Avenue, New York, NY 10019.

2. That on March 12, 2021, declarant served the foregoing:

## **EPIC GAMES, INC.'S TENTATIVE INITIAL WITNESS LIST**

by electronic mail to the counsel listed on the attached service list.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of March 2021, at New York, New York.

/s/ *John I. Karin*  
JOHN I. KARIN

## **Service List**

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